

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA

In re

Case No. 02-10390-DHW

Chapter 7

JACK W. MARTIN,

Debtor.

COLLIER H. ESPY, JR., Trustee,

Plaintiff,

v.

Adv. Proc. No. 02-1144-DHW

BILL HEARD CHEVROLET COMPANY,

Defendant.

MEMORANDUM OPINION

The chapter 7 trustee filed a complaint to determine the extent and priority of Nuvel Credit Corporation's security interest in the debtor's 2002 Chevrolet C-1500 pickup truck. The trustee later substituted Bill Heard Chevrolet Company (hereinafter "Bill Heard") as the defendant.<sup>1</sup>

The parties filed cross motions for summary judgment, stipulating that there is no genuine issue as to any material fact. Upon consideration of the undisputed facts and legal briefs of counsel, the court concludes that Bill Heard has a perfected security interest in the debtor's truck superior to the interest of the trustee.

Jurisdiction

The court's jurisdiction in this adversary proceeding derives from 28

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<sup>1</sup> Nuvel Credit Corporation assigned the sales contract and security agreement to Bill Heard Chevrolet on December 9, 2002 after the complaint was filed.

U.S.C. § 1334. Because this is a core proceeding under 28 U.S.C. § 157(b)(2)(K), the bankruptcy court may enter a final order or judgment.

### Undisputed Facts

On December 20, 2001 Jack W. Martin purchased a new 2002 Chevrolet C-1500 pick-up truck from Bill Heard. Martin is a resident of Enterprise, Alabama, and Bill Heard is an automobile dealership located in Columbus, Georgia.<sup>2</sup> Martin took possession of the truck from Bill Heard in Georgia but immediately removed the truck to Alabama.

On January 4, 2002, Bill Heard delivered a title application covering Martin's truck to the Muscogee County, Georgia Tag Office. The application was processed by the Muscogee County, Georgia Tax Commissioner on January 11, 2002.

On February 4, 2002 Bill Heard delivered a title application covering Martin's truck to the Alabama Department of Revenue. A certificate of title reflecting Bill Heard as lienholder was issued by the State of Alabama on March 5, 2002.

Martin filed a chapter 7 bankruptcy petition for relief on February 25, 2002.

### Conclusions of Law

The trustee contends that Bill Heard failed to timely perfect its security interest in Martin's truck. Specifically, the trustee argues that the attempt to perfect in Georgia was ineffective because the truck should have been titled originally in Alabama.<sup>3</sup> The court disagrees.

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<sup>2</sup> Both the sales contract and the security agreement reflect an Enterprise, Alabama address for Martin.

<sup>3</sup> If the attempt at perfection in Georgia was ineffective, perfection on February 4, 2002 in Alabama would not relate back to the date of the security agreement and

Alabama and Georgia have identical statutes regarding the coverage of goods by a certificate of title. See *Ala. Code* § 7-9A-303 (1975) and *Ga. Code Ann.* 11-9-303.<sup>4</sup> “Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority.” *Id.* Coverage continues until the certificate becomes ineffective by operation of law or until the certificate is superceded by a certificate of title issued by another jurisdiction. *Id.*

In addition, the statutes make clear that goods may be covered by a jurisdiction’s certificate of title even though there is no relationship between (1) the jurisdiction and the goods or (2) the jurisdiction and the debtor. *Id.* at subsection (a).

Applying the statutes to the case *sub judice* leads the court to conclude that Martin’s truck became covered by the Georgia certificate of title when Bill Heard delivered a valid title application to the Muscogee

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would be avoidable under 11 U.S.C. § 547.

<sup>4</sup> *Ga. Code Ann.* § 11-9-303 and *Ala. Code* § 7-9A-303 both provide:

(a) *Applicability of section.* This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) *When goods covered by certificate of title.* Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) *Applicable law.* The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

County, Georgia officials on January 4, 2002. The fact that Martin lived outside of the State of Georgia is of no consequence, because the lack of a relationship between the jurisdiction and the debtor is of no effect with respect to the good's coverage under the Georgia certificate of title.

The court must next determine whether Bill Heard properly perfected its security interest under Georgia law. *Ga. Code Ann.* § 40-3-50 provides the means for perfection of a security interest in a titled motor vehicle in Georgia.<sup>5</sup> The trustee does not dispute that Bill Heard accomplished all that is required under the statute to perfect its security interest. Further, because Bill Heard perfected its security interest in Martin's truck on

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<sup>5</sup> *Ga. Code Ann.*, § 40-3-50 provides:

(a) Except as provided in Code Sections 11-9-303, 11-9-316, and 11-9-337, the security interest in a vehicle of the type for which a certificate of title is required shall be perfected and shall be valid against subsequent creditors of the owner, subsequent transferees, and the holders of security interests and liens on the vehicle by compliance with this chapter.

(b)(1) A security interest is perfected by delivery to the commissioner or to the county tag agent of the county in which the seller is located, of the county in which the sale takes place, of the county in which the vehicle is delivered, or of the county wherein the vehicle owner resides, of the required fee and:

(A) The existing certificate of title, if any, and an application for a certificate of title containing the name and address of the holder of a security interest; or

(B) A notice of security interest on forms prescribed by the commissioner.

(2) The security interest is perfected as of the time of its creation if the initial delivery of the application or notice to the commissioner or local tag agent is completed within 20 days thereafter, regardless of any subsequent rejection of the application or notice for errors; otherwise, as of the date of the delivery to the commissioner or local tag agent. The local tag agent shall issue a receipt or other evidence of the date of filing of such application or notice. When the security interest is perfected as provided for in this subsection, it shall constitute notice to everybody of the security interest of the holder.

January 4, 2002, within 20 days of the date of the creation of the interest, perfection relates back to the date of the transaction — December 20, 2001. Hence, Bill Heard had a perfected security interest in Martin's truck effective December 20, 2001.

Finally, the court must determine what effect, if any, Martin's removal of the truck from Georgia to Alabama had on Bill Heard's security interest. *Ala. Code* § 7-9A-316(e) provides:

(e) . . . A security interest described in subsection (d) [those in titled vehicles] becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 7-9A-311(b) or 7-9A-313 are not satisfied before the earlier of:

(1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or

(2) the expiration of four months after the goods had become so covered.

The trustee does not contend that Bill Heard's perfected security interest would have become unperfected under Georgia law.<sup>6</sup> *Ala. Code* § 7-9A-316(e)(1). Therefore, perfection of the security interest would have persisted for four months after the truck became covered under the Alabama certificate of title. *Ala. Code* § 7-9A-316(e)(1). Martin's truck became covered by Alabama's certificate of title when the application for title was delivered to the State on February 4, 2002. Martin's bankruptcy petition was filed well within that four-month period on February 25,

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<sup>6</sup> See *Ga. Code Ann.* § 40-3-56 regarding release and expiration of security interests in motor vehicles under Georgia law.

2002.<sup>7</sup> Accordingly, Bill Heard's security interest has been perfected since the date of its creation, and perfection was unaffected by the removal of the truck from Georgia to Alabama.

For these reasons the court concludes that Bill Heard's motion for summary judgment is due to be granted. Bill Heard has an interest in the truck superior to the interest of the chapter 7 trustee. An order consistent with this memorandum opinion will enter separately granting Bill Heard's motion for summary judgment.

Done this the 19<sup>th</sup> day of August, 2003.

/s/ Dwight H. Williams, Jr.  
United States Bankruptcy Judge

c: C. H. Espy, Jr., Trustee  
Allison M. Wright, Attorney for Bill Heard

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<sup>7</sup> Interestingly, it was Bill Heard who delivered the application to the State of Alabama on February 4, 2002. In so doing, it perfected its security interest under *Ala. Code* § 32-8-61 (1975) and need not rely upon the four-month time period provided by § 7-9A-316(e)(2).

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BILL HEARD CHEVROLET COMPANY,

Defendant.

SUMMARY JUDGMENT

In accordance with the Memorandum Opinion entered this day, it is hereby

ORDERED that summary judgment enter in favor of Bill Heard Chevrolet Company in this adversary proceeding.

Done this 19<sup>th</sup> day of August, 2003.

/s/ Dwight H. Williams, Jr.  
United States Bankruptcy Judge

c: C. H. Espy, Jr., Trustee  
Allison M. Wright, Attorney for Bill Heard